

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**

Date: **18 September 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Yekatom Defence Observations on
the Redacted Statements of P-2582 and P-2620**

Source: Defence for Mr. Alfred Rombhot Yekatom

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

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REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom ("Defence" and "Mr. Yekatom", respectively) respectfully informs the Trial Chamber that it is unable to carry out any meaningful investigation of the allegations in the statements of anonymous witnesses P-2582 and P-2620, or otherwise prepare for the defence in relation to them. Given the extensive redactions necessary to protect their safety, the prejudice suffered by Mr. Yekatom is not in fact mitigated by the disclosure of their statements as previously expected.

PROCEDURAL BACKGROUND

2. On 14 May 2020, the Prosecution filed a motion to amend the charges against Mr. Yekatom, proposing to add rape and sexual slavery charges.¹ The Pre-Trial Chamber denied the motion on 1 June 2020.² Leave to appeal was subsequently sought,³ opposed,⁴ and denied.⁵
3. On 16 July 2020, the Trial Chamber issued its *Decision Setting the Commencement Date of the Trial*, ordering the Prosecution to, *inter alia*, disclose the evidence related to witnesses listed on the Preliminary Witness List immediately and, at the latest, by 31 August 2020.⁶
4. On 21 August 2020, the Prosecution filed its *Request pursuant to Regulation 35 to Vary the Time Limit for Disclosure of Evidence Related to Trial Witnesses Listed on the Preliminary Witness List*, requesting for, *inter alia*, a delay in disclosure of the identities and witness materials of P-2582 and P-2620.⁷ A confidential version was notified to the Defence on 24 August 2020.
5. On 25 August 2020, the Defence responded that it does not oppose to a short

¹ [ICC-01/14-01/18-518-Conf](#). Public redacted version: [ICC-01/14-01/18-518-Red](#).

² [ICC-01/14-01/18-538](#).

³ [ICC-01/14-01/18-545](#).

⁴ [ICC-01/14-01/18-549-Red](#).

⁵ [ICC-01/14-01/18-560](#).

⁶ [ICC-01/14-01/18-589](#), para. 16.

⁷ [ICC-01/14-01/19-628-Conf-Red](#), paras. 3-9.

extension of time, provided that their statements are disclosed only with the necessary redactions to conceal their identities to avoid significantly prejudicing the Defence.⁸

6. On 31 August 2020, the Trial Chamber instructed the Prosecution by e-mail to disclose redacted statements of P-2582 and P-2620 by 7 September 2020. A confidential redacted version of the decision was notified to the Defence on 11 September 2020.⁹
7. On 7 September 2020, the redacted statements of P-2620 and P-2582 are disclosed to the Defence.¹⁰
8. On 14 September 2020, after a careful review of the disclosed statements, the Defence wrote to the Prosecution, explaining that with the information provided, it is unable to meaningfully investigate the alleged incidents. Whilst accepting its limited ability to comment on what is needed for the protection of the witnesses, the Defence queried if the Prosecution would revisit and issue a lesser redacted version.¹¹
9. On 17 September 2020, the Prosecution discussed the matter with the Defence over phone and responded in writing.¹² The Prosecution undertook to lift “a limited number” of redactions after further review and consultation with its Protection Strategies Unit (“PSU”) and the Victims and Witnesses Section (“VWS”). But it is their considered assessment that the remaining redactions, albeit extensive, need to be maintained pending the implementation of protective measures. This prompt and informative response has been very

⁸ [ICC-01/14-01/18-629-Conf](#), para. 18.

⁹ [ICC-01/14-01/18-648-Conf-Red](#).

¹⁰ [ICC-01/14-01/18-644-Conf-AnxA](#). P-2620: [CAR-OTP-2123-0057-R01](#) (22 November 2019), [CAR-OTP-2121-2567-R01](#) (14 January 2020); P-2582: [CAR-OTP-2117-0605-R01](#) (23 September 2019).

¹¹ Email from Yekatom Lead Counsel to Senior Trial Attorney Kweku Vanderpuye dated 14 September 2020. Email correspondence can be made available to the Chamber upon request.

¹² Email from Senior Trial Attorney Kweku Vanderpuye to Yekatom Lead Counsel dated 17 September 2020. Email correspondence can be made available to the Chamber upon request.

helpful and is thereby gratefully acknowledged.¹³

SUBMISSIONS

10. At the outset, the Defence clarifies that at the moment, it does not intend to challenge the redactions applied. It trusts that the joint assessment of the PSU and the VWS to maintain the redactions is a proper balance between the security of the witnesses and the disclosure obligation of the Prosecution.
11. Nonetheless, it was not expected that substantive and identifying information of the incidents described in these statements also required redactions in order to conceal the witnesses' identities.
12. According to Witness P-2620, "RAMBO" purportedly visited a series of Anti-Balaka bases, barricades, and camps, the locations of which are redacted.¹⁴ The same redactions are applied over the locations of the barricades erected by the Anti-Balaka in the witness' other statement.¹⁵ It is unclear which city or, indeed, province they were located.
13. The two statements each contain 16 and 28 entirely redacted paragraphs. It is not possible to draw any usable inference the available text either.
14. Meanwhile in the statement of Witness P-2582, redactions are applied over the date and location of what appears to be an attack by Mr. Yekatom's group, the locations of the camps or bases as well as the number of the Anti-Balaka elements stationed therein, the locations where people allegedly fled, the whereabouts of houses that are allegedly burnt down by the Anti-Balaka, the identifying information of the three mosques that are claimed to be destroyed by the Anti-Balaka elements, the villages reached by Mr. Yekatom's group,

¹³ Email from Yekatom Lead Counsel to Senior Trial Attorney Kweku Vanderpuye dated 17 September 2020. Email correspondence can be made available to the Chamber upon request.

¹⁴ [CAR-OTP-2121-2567-R01](#), paras. 20, 39, and 40.

¹⁵ [CAR-OTP-2123-0057-R01](#), paras. 22-23.

and the locations where Muslims were allegedly killed by Mr. Yekatom, the ERN of the videos and photographs shown to the witness, as well as the comments thereof.¹⁶

15. Likewise, the statement of P-2582 contains a total of 57 paragraphs entirely redacted, rendering it impossible to draw any inference of investigative value.
16. Whilst the Defence is on notice of the general nature of the allegations made by Witnesses P-2620 and P-2582 against Mr. Yekatom, it is neither able to recognise the incidents in their narratives or pin down the places, the persons or, in some instances, the timeframe concerned. There is no lead discernable from the disclosed information.
17. Following the Defence's query, the PSU and the VWS revisited and approved some additional redaction lift. The new versions are yet to be disclosed. However, the Defence understands from its *inter partes* consultation with the Prosecution that the approved lift is minimal.
18. Without a substantially lesser redacted version, the Defence cannot carry out any meaningful investigation or otherwise review its evidence collection to prepare for the defence against Witnesses P-2620 and P-2582. The disclosure of redacted statements did not in fact mitigate the prejudice to Mr. Yekatom, in particular in relation to his right to have the adequate time and facilities for defence preparation pursuant to Article 67.
19. The Defence informed the Prosecution of its intention to file these observations before the Chamber, given that the presumed mitigation of the potential impact of delayed disclosure on defence preparation, in the Chamber's view, hinges upon the Defence's access to "the substantive content

¹⁶ [CAR-OTP-2117-0605-R01](#), paras. 30, 42, 45, 49, 50, 56, 64, 65, 67, 68, 71, 73, 107, 109-120, 124, and 125-138.

of the statements” of P-2582 and P-2620.¹⁷

CONFIDENTIALITY

20. These observations are filed on a confidential basis, corresponding to the classification of the pleadings on the same matter. The Chamber is requested to issue a public redacted decision and order the parties to file public redacted versions forthwith.

CONCLUSION

21. The Defence submits these observations to assist the Trial Chamber with appraising the prejudice to Mr. Yekatom despite his access to the statements of P-2582 and P-2620, and in due course, determining the appropriate remedies.
22. The Defence will continue to consult with the Prosecution in search of possible ways to mitigate the prejudice including, but not limited to, for example, scheduling these witnesses later or last in the Prosecution case to allow for adequate time for the Defence to prepare. Such requests will be submitted, as appropriate, with specific relief.

RESPECTFULLY SUBMITTED ON THIS 18th DAY OF SEPTEMBER 2020



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¹⁷ [ICC-01/14-01/18-648-Conf-Red](#), para. 36 (emphasis added): “[T]he Chamber considers that the disclosure of the redacted versions of the witnesses’ statements would strike an appropriate balance between the need to ensure the safety of these witnesses and the rights of the accused as it would enable the Prosecution to withhold the witnesses’ identities while the Defence would have access to the substantive content of the statements. In the Chamber’s view, this measure mitigates the potential impact of delayed disclosure on defence preparation.”